



JUL - 5 2017

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NEW YORK 10007-1866

**VIA CERTIFIED MAIL:**  
**RETURN RECEIPT REQUESTED**

President  
Linde LLC  
200 Somerset Corporate Blvd.  
Suite 7000  
Bridgewater, NJ 08807

Re: Request for Information Pursuant to Section 104 of CERCLA  
Niagara Falls Boulevard Site, 9524 & 9540 Niagara Falls Boulevard, Niagara Falls,  
Niagara County, New York and Holy Trinity Cemetery Site 5401 Robert Avenue,  
Lewiston, Niagara County, New York

Dear Sir or Madam:

The United States Environmental Protection Agency ("EPA") is charged with responding to the release or threatened release of hazardous substances, pollutants, and contaminants into the environment and with enforcement under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. §§ 9601-9675 (also known as the "Superfund" law). For your information, a copy of the Superfund law may be found at [www.epa.gov/superfund/action/law/index.htm](http://www.epa.gov/superfund/action/law/index.htm).

This letter seeks the cooperation of Linde LLC ("Linde") in providing information and documents related to the Niagara Falls Boulevard ("NFB") Site and the Holy Trinity Cemetery ("HTC") Site (collectively, the "Sites"). The NFB Site encompasses 2.53 acres and consists of two parcels, 9524 and 9540 Niagara Falls Boulevard, Niagara Falls, Niagara County, New York (the "9524 parcel" and the "9540 parcel," respectively). The 9524 parcel contains a bowling alley and an asphalt parking lot; the 9540 parcel also contains an asphalt parking lot, as well as a building supply center. The HTC Site is located at 5401 Robert Avenue, Lewiston, Niagara County, New York, and is estimated to constitute 2.91 acres of a 31.5-acre cemetery. There is one building on the HTC Site, which is utilized as a residence and a cemetery maintenance facility.

EPA has documented the release and threatened release of hazardous substances into the environment at both Sites. In 1978, the United States Department of Energy conducted an aerial radiological survey of the Niagara Falls region and identified the NFB Site as one of fifteen properties that exhibited radiation levels above natural background levels. In 1980 and 2006, the New York State Department of Environmental Conservation ("NYSDEC") encountered similarly elevated levels of radioactivity at certain areas of the HTC Site during the performance of radiological surveys. The elevated radiation levels at the Sites were found to be attributable to buried, radioactive slag material, which the NYSDEC suspected originated from a single source.

NYSDEC referred the NFB Site and the HTC Site to EPA for further evaluation in July 2013. The Sites were sampled by EPA in 2013 and 2014 for the presence of soil and air contamination, and EPA subsequently performed a Preliminary Assessment and Site Inspection at both Sites. EPA commenced a time-critical removal action at the NFB Site in June 2016, which is ongoing. EPA has also initiated removal activities at the HTC Site, and it is in the process of performing additional surveying and sampling work there.

EPA has reason to believe that the source of the contaminated fill material at the Sites may have been Linde's corporate predecessor, the Pittsburgh Metallurgical Company. Under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), EPA has broad information-gathering authority that allows EPA to require persons to provide, among other things, information or documents relating to the materials generated, treated, stored, or disposed of at or transported from a facility, the nature or extent of a release or threatened release of a hazardous substance, pollutant, or contaminant at or from a facility.

A complete and truthful response to the Request for Information should be provided to EPA by July 28, 2017.

While EPA seeks your cooperation in this investigation, compliance with the Request for Information is required by law. When you have prepared a response to the Request for Information, please sign and have notarized the enclosed "Certification of Answers to Request for Information," and return that Certification to EPA along with your response. Please note that false, fictitious, or fraudulent statements or representations may subject you to civil or criminal penalties under federal law. In addition, Section 104 of CERCLA authorizes EPA to pursue penalties for failure to comply with a Request for Information.

Some of the information EPA is requesting may be considered by you to be confidential. Please be aware that you may not withhold the information upon that basis. If you wish EPA to treat the information confidentially, you must advise EPA of that fact by following the procedures described in the Instructions that follow this letter, including the requirements for supporting your claim of confidentiality.

Please note that if after submitting your response you obtain additional or different information concerning the matters addressed by this Request for Information, it is necessary that you promptly supplement your response as described in the Instructions.

This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501.

See the enclosed Instructions for information on how to respond to the enclosed questions and/or information requests. Your response to this Request for Information should be mailed and/or electronically sent to:

Eric Daly  
Removal Action Branch  
U.S. Environmental Protection Agency, Region II

2890 Woodbridge Avenue, Bldg 205  
Edison, New Jersey 08837  
Daly.Eric@epa.gov

A copy of your reply should be sent to:

Margo Ludmer, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region II  
290 Broadway, 17th Floor  
New York, New York 10007  
Ludmer.Margo@epa.gov

Please give the matters addressed in this letter your immediate attention. If you have any questions regarding this Request for Information, or would like to discuss this matter with EPA, please contact Mr. Daly at (732) 321-4350. Inquiries from attorneys should be addressed to Ms. Ludmer at (212) 637-3187.

We appreciate and look forward to your prompt response to this Information Request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Eric Wilson", with a stylized flourish at the end.

Eric Wilson, Deputy Director for Enforcement and Homeland Security  
Emergency and Remedial Response Division

Attachments

## **INSTRUCTIONS FOR RESPONDING TO REQUEST FOR INFORMATION**

1. A complete and separate response should be given for each question and/or information request. If information or documents responsive to this Request for Information are not in your possession, custody, or control, please identify the person(s) from whom such information may be obtained.
2. Identify each answer with the number of the question and/or information request and the subpart to which it responds. For each document produced in response to this Request for Information, indicate on the document, or in some other reasonable manner, the question to which it applies.
3. Provide responses to the best of your ability, even if the information sought was never put down in writing or if the written documents are no longer available. Consult with all present and past employees and agents of your company whom you have reason to believe may be familiar with the matter to which the question pertains.
4. In answering each question, identify each individual and any other source of information (including documents) that were consulted in the preparation of the response to the question.
5. If you have reason to believe that an individual or entity other than one employed by or known to your company may be able to provide additional details or documentation in response to any question, state that person or entity's name, last known address, phone number, and the reasons for your belief.
6. If you cannot provide a precise answer to a question, please approximate, but in any such instance, state the reason for your inability to be specific.
7. If a document is requested, but not available, state the reason for its unavailability. To the best of your ability, identify the document by author, date, subject matter, and number of pages, and identify all recipients of the document with their last known addresses and phone numbers.
8. If anything is omitted from a document produced in response to the Request for Information, state the reason for, and the subject matter of, the omission.
9. If additional information or documents responsive to this Request become known or available to you after you respond to this Request, EPA hereby requests pursuant to Section 104(e) of CERCLA that you supplement your response to EPA within **15 calendar days** from the date such information or documents became available to you.
10. **Confidential Information:** The information requested herein must be provided even though you may contend that it includes confidential information or trade secrets. You

may assert a confidentiality claim covering all or part of the information requested, pursuant to Sections 104(e)(7)(E) and (F) of CERCLA, 42 U.S.C. § 9604(e)(7)(E) and (F), and 40 C.F.R. § 2.203(b).

If you make a claim of confidentiality for any of the information you submit to EPA, you must prove that claim. For each document or response you claim to be confidential, you must separately address the following points:

- a. the portions of the information alleged to be entitled to confidential treatment;
- b. the period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specific event, or permanently);
- c. measures taken by you to guard against an unintended disclosure of the information to others;
- d. the extent to which the information has been disclosed to others and the precautions taken in connection therewith;
- d. pertinent confidentiality determinations, if any, by EPA or other federal agencies, and a copy of any such determination, if available, or a reference to them; and
- f. whether you assert that disclosure of the information would likely result in substantial harmful effects to your business' competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects.

To make a confidentiality claim, please stamp or type "confidential" on all confidential responses and any related confidential documents. Confidential portions of otherwise non-confidential documents should be clearly identified. You should indicate a date, if any, after which the information need no longer be treated as confidential. Please submit your responses so that all non-confidential information, including any redacted versions of documents, are in one envelope and all materials for which you desire confidential treatment are in another envelope.

All confidentiality claims are subject to EPA verification. It is important that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information, that you intend to continue to do so, and that the information is not and has not been obtainable by legitimate means without your consent. Information covered by such claim will be disclosed by EPA only to the extent permitted by Section 104(e) of CERCLA and 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, then it may be made available to the public by EPA without further notice.



## DEFINITIONS

1. The term "document" or "documents" shall mean any written, recorded, computer generated, or visually or aurally reproduced material of any kind in any medium in your possession, custody, or control or known by you to exist, including originals, all prior drafts, and all non-identical copies.
2. The term "Facility" shall mean the facility located at 3801 Highland Avenue, Niagara Falls, New York, formerly operated by the Pittsburgh Metallurgical Company and Airco Alloys.
3. The term "hazardous substances" shall have the meaning set forth in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
4. The term "identify" means, with respect to a natural person, to set forth the person's name, present or last known employer and business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, occupation, position, or business. The term "identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to provide its full name, address, and a brief description of its business.
5. The term "industrial waste" shall mean any solid, liquid, or sludge, or any mixture thereof, that possesses any of the following characteristics:
  - a. it contains one or more hazardous substances (at any concentration) as defined in 42 U.S.C. § 9601(14);
  - b. it is a "hazardous waste" as defined in 42 U.S.C. § 6903(5);
  - c. it has a pH less than 2.0 or greater than 12.5;
  - d. it reacts violently when mixed with water;
  - e. it generates toxic gases when mixed with water;
  - f. it easily ignites or explodes;
  - g. it is an industrial waste product;
  - h. it is an industrial treatment plant sludge or supernatant;
  - i. it is an industrial byproduct having some market value;
  - j. it is coolant water or blowdown waste from a coolant system;
  - k. it is a spent product which could be reused after rehabilitation; or
  - l. it is any material which you have reason to believe would be toxic if either ingested, inhaled or placed in contact with your skin.
6. The term "material" or "materials" shall mean any and all objects, goods, substances, or matter of any kind, including but not limited to wastes.
7. The term "person" shall include any individual, firm, unincorporated association, partnership, corporation, trust, non-profit organization, or other entity.

8. The term "pollutant or contaminant" shall have the same definition as that contained in Section 101(33) of CERCLA, 42 U.S.C. § 9601(33), and includes any mixtures of such pollutants or contaminants with any other substances. Petroleum products mixed with pollutants and contaminants are also included in this definition.
9. The term "release" shall have the meaning set forth in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
10. The term "Sites" shall mean the Niagara Falls Boulevard Site located at 9524 and 9540 Niagara Falls Boulevard, Niagara Falls, Niagara County, New York, and the Holy Trinity Cemetery Site located at 5401 Robert Avenue, Lewiston, Niagara County, New York.
11. The term "the Company," "your Company," and "you" shall mean Linde LLC as it is currently named and constituted, including its divisions, branches, officers, managers, employees, contractors, trustees, partners, assigns, or agents, as well as any predecessor companies, including Pittsburgh Metallurgical Company and Airco Corporation, and any successors.
12. The term "waste" or "wastes" shall mean and include trash, garbage, refuse, by-products, solid waste, slag, hazardous waste, hazardous substances, and pollutants or contaminants, whether solid, liquid, or sludge, including but not limited to containers for temporary or permanent holding of such wastes.
13. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA or the Resource Conservation and Recovery Act ("RCRA"), in which case the statutory definitions shall apply.

### **REQUEST FOR INFORMATION**

1. State the correct legal name and mailing address of your Company.
2. If your Company wishes to designate an individual for any future correspondence concerning the Sites, including any legal notices, please so indicate here by providing that individual's name, address, telephone number, and email address.
3. Identify the state and date of incorporation of your Company and your Company's agent for service of process in New York and in your state of incorporation.
4. If Linde LLC currently is, or was at any time, a subsidiary or affiliate of another corporation or other business entity, or has or had subsidiaries that operated within Niagara County or Erie County, New York, or is a successor to another company, identify these related companies. For each related company, describe the relationship to Linde LLC and indicate the date and manner in which each relationship was established.
5. Please list all facilities in Niagara County and Erie County, New York, that were owned, operated, and/or leased by your Company between 1950 and 1970, and the dates of ownership, operation, and/or leasing of these facilities.
6. For each facility identified in response to Information Request No. 5, indicate whether radioactive material was processed, handled, transported, stored, or disposed of by your Company at or in connection with the facility between 1950 and 1970. If so, please provide any knowledge, information, and/or documents relating to such processing, handling, transportation, storage, and/or disposal of the radioactive material, including:
  - a. the industrial processes involving the radioactive material;
  - b. the composition and amount of radioactive material processed, handled, transported, stored, and/or disposed of;
  - c. the persons involved in the processing, handling, transportation, storage, and/or disposal of the radioactive material;
  - d. any intermediate sites where the radioactive material was stored or held at any time prior to final treatment or disposal; and,
  - e. the precise locations, addresses, and names of the facilities where final disposal of the radioactive material occurred.
7. For each facility identified in response to Information Request No. 5, provide any knowledge, information, and/or documents not already provided in response to Information Request No. 6 concerning the transportation, storage, or disposal of industrial waste in connection with the facility between 1950 and 1970. Please include in your response knowledge, information, and/or documents concerning:



- a. the composition and amount of the waste material;
  - b. the persons involved in the transportation, storage, and/or disposal of the waste material;
  - c. any intermediate sites where the waste material was stored or held at any time prior to final treatment or disposal; and,
  - d. the precise locations, addresses, and names of the facilities where final disposal occurred.
8. For each facility identified in response to Information Request No. 5, indicate whether the facility made slag or other material available between 1950 and 1970 to be used by a third-party as fill material. If so, please provide any knowledge, information, and/or documents related to the transfer of the slag or other material.
9. Describe in detail the nature of the operations at the Facility between 1950 and 1970.
10. Provide any knowledge, information, and/or documents concerning the industrial, chemical, or institutional processes performed at the Facility between 1950 and 1970.
11. Indicate whether any individual or entity other than your Company owned, operated, and/or leased the Facility property between 1950 and 1970. If so, please provide any knowledge, information, and/or documents concerning that individual or entity's ownership, operation, and/or lease of the Facility property.
12. Identify all persons that may have information or documents relating to the generation, handling, storage, transportation, or disposal of hazardous substances or industrial wastes at or in connection with the Facility.
13. Indicate whether your Company ever produced, maintained, and/or contributed to stockpiles or other accumulations of radioactive material at any location in Niagara Falls between 1950 and 1970. If so, please provide any knowledge, information, and/or documents related to these stockpiles or other accumulations of radioactive material.
14. Specify whether your Company ever owned, operated, leased, and/or made use of a landfill, dump, or other disposal facility on or in the vicinity of Lockport Road in Niagara Falls between 1950 and 1970. If so, please provide any knowledge, information, and/or documents related to these facilities, including their precise locations, addresses, and names.
15. Provide any knowledge, information, and/or documents, including contracts, invoices, letters, memoranda, and reports, concerning the relationship between Clarence Frangione and/or his trucking business in Niagara County, New York, and your Company.

16. Provide any knowledge, information, and/or documents related to the construction of the parking areas and roadbeds at the Sites, which is believed to have occurred in the early 1960s. In your response, if known, please identify all persons involved in the construction of the parking areas and roadbeds at the Sites and indicate the source(s) of the fill material for the construction activities.
17. Provide all information of which you are aware regarding the placement of radioactive material at the Sites, including but not limited to when the placement of such material occurred, the source of the material, and the person(s) that handled the material. Provide knowledge, information, and/or documents relating to contracts, agreements, or permits between any persons involved in any activities associated with the ultimate placement of radioactive materials at the Sites.
18. Identify all entities and individuals with knowledge of facts relating to the responses provided to this Request for Information. Identify each individual who assisted or was consulted or who answered on behalf of your Company in the preparation of its response to this Request for Information, and specify the question with which each person assisted in responding.